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VENGROW & TEXTOR, LLP  
Attorneys for Defendant Shipco Transport, Inc.  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NIPPONKOA INSURANCE CO., LTD. – U.S.  
BRANCH,

Plaintiff,

-against-

KUEHNE & NAGEL, INC., d/b/a BLUE  
ANCHOR LINE, and SHIPCO TRANSPORT,  
INC.,

Defendants.

ECF CASE

07 Civ. 9581

**SHIPCO'S ANSWER TO KUEHNE &  
NAGEL, INC. d/b/a BLUE ANCHOR  
LINE'S CROSS-CLAIM**

Defendant Shipco Transport, Inc. (“Shipco”), through its attorneys Cichanowicz, Callan, Keane, Vengrow & Textor, LLP, answers the Cross-Claim of Kuehne & Nagel, Inc. d/b/a Blue Anchor Line with civil number 07 Civ. 9581 as follows:

**IN RESPONSE TO THE CROSS-CLAIM AGAINST  
DEFENDANT SHIPCO TRANSPORT, INC. (SHIPCO)**

1. Admits Plaintiff in the within action has alleged damages to goods transported from Osaka, Japan to the Port of Los Angeles and from there to be delivered to Illinois.
2. Denies each and every allegation contained in paragraph 2 of Plaintiff's Complaint.

3. Denies each and every allegation contained in paragraph 3 of Plaintiff's Complaint.

4. Denies each and every allegation contained in paragraph 4 of Plaintiff's Complaint.

5. Denies each and every allegation contained in Paragraph 5 of Plaintiff's Complaint.

6. Denies each and every allegation contained in paragraph 6 of Plaintiff's Complaint.

**AFFIRMATIVE DEFENSES  
AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

7. That the said shipment as described in Plaintiff's Complaint is subject to all the terms, conditions and exceptions contained in certain bills of lading then there issued, by which the shippers and consignees of said bills of lading agree to be and are bound.

8. Said shipment was transported on said vessel subject to the contractual terms and conditions of the aforesaid bills of lading.

9. Any shortage, loss and/or damage to the shipment in suit which Shipco specifically denies was due to causes for which Shipco is not liable or responsible by virtue of the provisions of the Carriage of Goods by Sea Act, ("COGSA") approved April 16, 1936, and/or Harter Act, and/or the provisions of the said bills of lading and/or the General Maritime Law and/or applicable foreign law.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

10. Due diligence was exercised on the part of the carrier to make the vessels and its appurtenances seaworthy, and to make all other parts of the vessel in which goods are carried, fit and safe for their reception, carriage and preservation of said shipment.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

11. That if the good in suit were damaged, which is denied, the damage was proximately caused by insufficiency of packaging or inadequacy of marks, for which Shipco is not liable under the Carriage of Goods by Sea Act, 46 U.S.C. §1304(2)(o), and (n), and by the terms of the contract of carriage.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

12. Plaintiff has failed to properly and fully mitigate its damages in its Complaint.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

13. That if the goods in suit were damaged, which is denied, the damage was proximately caused by an act or omission of the shipper, for which Shipco is not liable under the Carriage of Goods by Sea Act, 46 U.S.C. §1304(2)(i), and by the terms of the contract of carriage.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

14. Defendant Shipco Transport, Inc. is an agent for a disclosed principal i.e.: Kuehne & Nagel, Inc. d/b/a Blue Anchor Line.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

15. That if the good in suit were lost and/or damaged, which is denied, said loss and/or damage was caused in whole or in part by the contributory negligence of the Plaintiff and/or its agents.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

16. That if Plaintiff's cargo suffered any loss or damage, which Shipco denies, then such loss or damage resulted from a cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of Shipco, and Shipco is not liable under the Carriage of Goods by Sea Act, 46 U.S.C. §1304(2) (Q).

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

17. Pursuant to an agreement dated March 6, 2006, cargo moving under a Kuehne & Nagel (Blue Anchor) Bill of Lading, AZ West would handle the inland portion of the transit and all claims resulting from that move are to be handled by Kuehne & Nagel directly with AZ West. See paragraph 3 of Exhibit 1.

WHEREFORE, Defendant Shipco Transport Inc. prays that the Crossclaim and Plaintiff's Complaint against it be dismissed; that it be granted further relief in the form of reasonable attorney fees and expenses and that the Court may grant such other or further relief as may be just and proper.

Dated: New York, New York  
December 31, 2007

Respectfully submitted,

CICHANOWICZ, CALLAN, KEANE,  
VENGROW & TEXTOR, LLP  
Attorneys for Defendant Shipco Transport, Inc.

By: / s / Patrick Michael DeCharles, II  
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To: Maloof Browne & Eagan LLC  
Attorneys for Plaintiff  
411 Theodore Fremd Avenue – Suite 190  
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Attn: David T. Maloof, Esq.  
Thomas M. Eagan, Esq.

Ernest H. Gelman, Esq.  
Attorney for Defendants Kuehne & Nagel, Inc.  
Sued herein d/b/a Blue Anchor Line

350 Fifth Avenue, Suite 4908  
New York, New York 10118

**CERTIFICATE OF SERVICE BY ECF AND BY REGULAR U.S. MAIL**

The undersigned declares under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen years and I am not a party to this action.
2. On December 31, 2007, I served a complete copy of Defendant Shipco Transport, Inc's **Answer to Crossclaims** by ECF to the following attorneys at their ECF registered address and by regular U.S. mail at the following addresses:

Maloof Browne & Eagan LLC  
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/ s / Patrick Michael DeCharles, II  
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